No. 80-183

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1980

THE PEOPLE OF THE STATE OF ILLINOIS, *Petitioners,* vs. **JAMES E. WEBER,** *Respondent.*	Appeal from the Appellate Court Third District No. 79-363 Original Appeal from the Circuit Court of the Thirteenth Judicial Circuit LaSalle County, Illinois No. 78-CF-192 Honorable **FRED P. WAGNER** Judge Presiding.

PETITION FOR A WRIT OF CERTIORARI

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* The opinion of the Appellate Court of Illinois, Third Judicial District, is presented in Appendix A to this petition in "slip opinion" form which is the form of the opinion as initially released by the appellate court as a proposed opinion subject to revision. At the time of the filing of this petition, the reporter of decisions had not yet published the official report containing the opinion in this case. However, the clerk of the appellate court has indicated no changes were made to the slip opinion attached hereto before it was sent to the reporter of decisions for publication.

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THE PEOPLE OF THE STATE OF ILLINOIS, *Petitioners,* vs. **JAMES E. WEBER,** *Respondent.*	Appeal from the Appellate Court Third District No. 79-363 Original Appeal from the Circuit Court of the Thirteenth Judicial Circuit LaSalle County, Illinois No. 78-CF-192 Honorable **FRED P. WAGNER** Judge Presiding.

PETITION FOR A WRIT OF CERTIORARI

QUESTION PRESENTED FOR REVIEW

Whether the appellate court's holding that the defendant had automatic standing under *Jones* v. *United States,* 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960), was erroneous where that automatic standing rule was specifically overruled in *United States* v. *Salvucci,* ___ *U.S.* ___, ___ *L. Ed. 2d* ___, ___ *S. Ct.* ___ *(No. 79-244, June 25, 1980) and Rawlings* v. *Kentucky,* ___ U.S. ___, ___ L.Ed. 2d ___, ___ S. Ct. ___ (No. 79-5146, June 25, 1980), and the defendant had absolutely no legitimate expectation of privacy in the apartment rented by the defendant's friend and only visited by the defendant on one occasion.

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 80 Ill. App. 3d 1025, 400 N.E.2d 926 (3d Dist. 1980) (see Appendix A). The order of the Illinois Supreme Court denying leave to appeal is not reported, but is attached hereto (see Appendix B).

The opinion of the Appellate Court of Illinois, Third Judicial District, is presented in Appendix A to this petition in "slip opinion" form which is the form of the opinion as initially released by the appellate court as a proposed opinion subject to revision. At the time of the filing of this petition, the reporter of decisions had not yet published the official report containing the opinion in this case. However, the clerk of the appellate court has indicated no changes were made to the slip opinion attached hereto before it was sent to the reporter of decisions for publication.

JURISDICTION

The opinion of the Illinois Appellate Court, Third District, was filed on January 24, 1980. A timely petition for leave to appeal was filed by the People in the Illinois Supreme Court. The order of the Illinois Supreme Court denying the People's petition was entered on May 29, 1980. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3). The instant petition for a writ of certiorari is filed within 60 days of that order.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

On October 17, 1978, Deputy Sheriff Michael Mahar was off duty and driving his private automobile. (RB.28) He observed the defendant driving an automobile in downtown LaSalle, Illinois, at approximately 11 a.m. (R.13) He knew the defendant from the past, and recognized him as one who had spent time in the penitentiary, and also recognized the car that he was driving as one matching the description of an auto stolen in Streator, Illinois, the night before. (RB.29) The officer followed the defendant, and observed him park in front of the LaSalle Florist Shop. He then watched the defendant exit the automobile and enter the apartment above the floral shop. (R.25) The defendant entered the apartment building alone and was carrying a brown paper bag at that time. (R.26)

The officer parked across the street from where the defendant had parked the automobile believed to have been stolen and instructed his wife, a part-time matron with the sheriff's department, to watch the apartment and the car. (R.25, 32) Officer Mahar then entered a nearby jewelry store. The officer asked the store's proprietor to watch the apartment and automobile while he made a phone call to the LaSalle Police Department. (R.26, 37) The phone call confirmed the fact that the automobile in question was stolen. (RB.36)

Subsequently, Officer Mahar entered the street level entrance to the building with Officer Dirk Girton of the LaSalle Police Department. (RB.15) The two officers climbed the stairs and heard voices. At the top of the stairs they observed three doors: one on each end of the hallway and an open door right in front of them at the top of the stairs. (R.27) They entered the open doorway, although no one invited them in. (RB.18) The officers did not knock or announce their presence before entering the apartment. (RB.20)

At the doorway, a wall obscured their view of the defendant and another individual, Dan Beals. (RB.19, 20) When they entered the apartment, they were able to see around the partition into the living room portion of the apartment, and they then observed the defendant, Beals, and several women together with bags of marijuana. (RB.21) The defendant was seen holding the alleged marijuana. (RB.33) The defendant, Beals, and one of the women were subsequently arrested. The defendant testified at the suppression motion that he knew Beals but it was the first time he had ever visited Beals at that particular apartment. (R.13) Beals was the sole tenant of the apartment. (RB.8)

At the defendant's motion to suppress the trial court found that the intrusion into Beals' apartment violated the fourteenth amendment of the United States Constitution. Furthermore, the trial court found that the defendant had standing to raise an objection. (R.60) The court, therefore, suppressed the evidence of cannabis discovered in Beals' apartment. The court's ruling did not concern the automobile theft indictment.

The Petitioners herein, the People of the State of Illinois, filed notice of appeal on March 2, 1979.

REASONS WHY THE WRIT SHOULD BE GRANTED

THE DEFENDANT DID NOT HAVE AUTOMATIC STANDING UNDER *JONES* V. *UNITED STATES* AND HAD NO LEGITIMATE EXPECTATION OF PRIVACY IN THE PREMISES SEARCHED.

The Appellate Court of Illinois, Third District, held that under the facts of this case the defendant had "standing" to contest the search of his friend Beals' apartment. In so holding, the court noted that the defendant was legitimately on the premises searched and was charged with unlawful possession of cannabis seized during that search. The court relied on the automatic standing doctrine that this honorable Court announced in *Jones* v. *United States,* 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960). That case conferred standing to contest an allegedly illegal search on an individual where the same possession needed to establish standing constituted an essential element of the offense charged. In the instant case the court denied the Petitioners' argument that an individual merely visiting a friend's apartment has no reasonable expectation of privacy, especially when it is the defendant's first visit to that apartment and he had only been there a few minutes when the search was effectuated.

Subsequent to the decision by the Illinois Appellate Court, Third District, this honorable Court decided two cases which questioned the continued validity of the automatic standing rule of *Jones* v. *United States. United States* v. *Salvucci,* ____ U.S. ____, ____ L. Ed. 2d ____, ____ S. Ct. ____ (No. 79-244, June 25, 1980); *Rawlings* v. *Kentucky,* ____ U.S. ____, ____ L. Ed. 2d ____, ____ S. Ct. ____ (No. 79-5146, June 25, 1980). In those cases this honorable Court specifically overruled the automatic standing doctrine relied on by the Illinois Appellate Court, Third District, in deciding this case. The traditional

question of "standing" thus becomes a question of whether a defendant has a legitimate expectation of privacy in the premises searched. *Rakas* v. *Illinois,* 439 U.S. 128, 58 L. Ed. 2d 387, 99 S. Ct. 421 (1978); *United States* v. *Salvucci; Rawlings* v. *Kentucky.*

Obviously, the defendant in the instant case had no reasonable expectation of privacy in Beals' apartment. The apartment was rented by Beals individually. The defendant did not live at that apartment and in fact was visiting his friend Beals at that apartment for the first time at the time of the search. Clearly, any expectation of privacy in the Beals' apartment the defendant had would have been unreasonable under the circumstances of this case. Therefore, the fourth amendment to the United States Constitution, applicable to the State of Illinois through the fourteenth amendment, was not available to the defendant to contest the search of these premises.

The defendant's lack of an expectation of privacy is so clear in the instant case that the Petitioners suggest that summary disposition on the merits under United States Supreme Court Rule 23.1 is in order.

CONCLUSION

For the reasons stated herein, the petitioners respectfully request that a writ of certiorari issue and that this Court review the decision of the Appellate Court of Illinois, Third District, which affirmed the trial court's order granting the defendant's motion to suppress.

Respectfully submitted,

The People of the State of Illinois,
Petitioners

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APPENDIX A

No. 79-363

Filed 1/24/80

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D. 1980

THE PEOPLE OF THE STATE OF ILLINOIS, ***Plaintiff-Appellant,*** **vs.** **JAMES E. WEBER,** ***Defendant-Appellee.***	Appeal from the Circuit Court of LaSalle County. Honorable **FRED P. WAGNER,** Judge Presiding.

MR. JUSTICE SCOTT delivered the opinion of the court:

The defendant, James E. Weber, was charged with felony theft and unlawful possession of cannabis in indictments returned by the grand jury of LaSalle County. Following a pretrial hearing held for the purpose of determining whether evidence of the cannabis was obtained pursuant to an illegal search and seizure, the circuit court granted defendant's motion to suppress the challenged evidence. The People appeal that decision to suppress.

According to testimony elicited at the suppression hearing, on October 17, 1978, the defendant was driving a 1961 Chevrolet automobile accompanied by several others. His destination was Dan Beals' apartment, which he and the others entered upon their arrival. They proceeded to the living room of the apartment with Beals. Sometime thereafter he realized

that police officers were present in the room, those officers having entered the apartment silently, without announcement, and unbeknownst to the defendant. What the police officers saw when they entered the living room portion of Beals' apartment was the defendant, Beals, and several women together with bags of cannabis.

At the suppression hearing previously alluded to, a question was raised first as to whether the intrusion into Beals' apartment constituted an unconstitutional search and seizure and, second, as to whether the defendant had standing to raise an objection. The LaSalle County Circuit Court held that the intrusion was illegal and that the defendant had standing to assert that illegality. The cannabis seized was ordered suppressed.

On appeal the People do not raise an issue as to the constitutionality of the search. Rather, the People contend that the defendant lacked standing to complain of the legality of the search, and in so contending they rely primarily on the recent United States Supreme Court decision in *Rakas* v. *Illinois* (1978), ____ U.S. ____, 58 L. Ed. 2d 387, 99 S. Ct. ____. Such reliance is misplaced.

In a 1960 decision by the same Supreme Court, two grounds for standing to assert the constitutionality of a search and seizure were set forth. (*Jones* v. *U.S.* (1960), 362 U.S. 257, 4 L.Ed. 2d 697, 80 S.Ct. 725.) There was established a rule of automatic standing to contest an allegedly illegal search where the same possession needed to establish standing constitutes an essential element of the offense charged. (*Jones* v. *U.S.*, 362 U.S. at 263.) Secondly, it was expressly stated that anyone legitimately on the premises where a search occurs may challenge its legality. (*Jones* v. *U.S.*, 362 U.S. at 264.) We believe it is quite clear that under either of the two grounds of standing adumbrated by the *Jones* decision, the defendant possessed the standing found by the circuit court.

In their brief, however, the People assert that *Rakas* modifies and overrules the holding in *Jones*. We believe that assertion is only partially correct. It is true that the *Rakas* opinion rejects the legitimately on the premises test as "too broad a guage for measurement of Fourth Amendment rights." (*Rakas* v. *Illinois*, 58 L.Ed. 2d at 400.) It is also true that the *Rakas* opinion expressly declined to overrule the automatic standing rule. (*Rakas* v. *Illinois*, 58 L. Ed. 2d at 396, footnote 4.) Indeed, three different United States Courts of Appeals have considered the effect of *Rakas* on the automatic standing rule of *Jones*, and each such court has concluded that the automatic standing rule survives. (*U.S.* v. *Salvucci* (1979), 599 F. 2d 1094; *U.S.* v. *Mazzelli* (1979), 595 F. 2d 1157; *U.S.* v. *Byers* (1979), 600 F. 2d 1130.) The *Mazzelli* court says of *Rakas:*

> "That case re-examined the second portion of *Jones* dealing with standing based on interest in the premises searched and the standards that should apply in such cases. However, in substance it re-affirmed the proposition recognized in *Jones* that a possessory interest in that which was seized confers standing." *U.S.* v. *Mazzelli*, 595 F. 2d at 1160.

Similarly, the *Salvucci* court refused to hold "that the automatic standing rule of *Jones* (had) been implicitly overruled * * *." *U.S.* v. *Salvucci*, 599 F. 2d at 1098.

In *Jones* v. *U.S.* the Supreme Court held that a defendant has automatic standing to challenge the legality of a search or seizure if charged with a crime that includes, as an essential element of the offense charged, possession of the seized evidence at the time of the contested search and seizure. Although questioned and criticized, this rule has not been rejected. In the case *sub judice*, the defendant was charged with possession of cannabis, a crime wherein possession is an essential element of

the offense. Thus the offense charged confers the necessary standing. The circuit court correctly permitted the defendant to suppress the evidence seized.

Affirmed.

ALLOY, J., and STENGEL, J., concur.

APPENDIX B

ILLINOIS SUPREME COURT
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May 29, 1980

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No. 53258— *People State of Illinois, petitioner,* v. *James Weber, respondent.* Leave to appeal, Appellate Court, Third District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clerk of the Supreme Court